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Attorney's Docket No. BHA 465

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appln. No. 10/783,432)
First Named Applicant: DON K. WOOTEN)
Filed: 02/23/2004)
For: CAMOFLAGING APPARATUS)
TC/A.U.: 3765)
Examiner: Gloria M. Hale)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

**TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION
37 C.F.R. 1.192)**

1. Transmitted herewith, in triplicate, is the APPELLANT'S BRIEF in this application, with respect to the Notice of Appeal filed on or about June 7, 2005.
2. STATUS OF APPLICANT - This patent application is owned by applicant, who is a small entity.
3. FEE FOR FILING APPEAL BRIEF - Pursuant to 37 C.F.R. 1.17(c), the fee for filing the Appeal Brief is \$250.00 for a small entity.

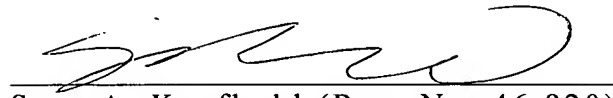
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4. FEE PAYMENT - A check for \$250.00 is submitted with this paper.

Respectfully submitted,


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APPELLANT'S BRIEF (37 CFR §1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on June 7, 2005.

The fees required under 37 CFR §1.17(c), and are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 CFR §1.192(a))

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This brief contains these items under the following headings, and in the order set forth below (37 CFR §1.192(c)):

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The final page of this brief bears the practitioner's signature.

I. REAL PARTIES IN INTEREST - 37 CFR §1.192(c)(1)(i)

The real party in interest in this appeal is the applicant Don K. Wooten.

II. RELATED APPEALS AND INTERFERENCES - 37 CFR §1.192(c)(1)(ii)

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS - 37 CFR §1.192(c)(1)(iii)

On June 7, 2005, appellant appealed from the final rejection of claims 1 through 14, all of which remain pending in the application.

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 14 claims

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 1 through 14
2. Claims withdrawn from consideration but not canceled: (none)
3. Claims pending: claims 1 through 14
4. Claims allowed: (none)
5. Claims rejected: claims 1 through 14

C. CLAIMS ON APPEAL

The claims on appeal are: claims 1 through 14.

IV. STATUS OF AMENDMENTS - 37 CFR §1.192(c)(1)(iv)

Claims 1 through 14 were originally filed in the subject patent application. In the first Amendment of the subject application, filed December 10, 2004, claims 1 and 14 were amended and no claims were cancelled. No amendments of the claims were requested after the final Office Action was mailed on March 9, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER - 37 CFR §1.192(c)(1)(v)

The invention comprises a body camouflaging assembly (10) that may include a body covering (12, see Figures 1 and 2) for removably positioning on a body. The body covering has an outer surface (14), and includes a pant (15--Figure 1) and shirt (16—Figure 1) combination for removably positioning over the legs of the body of the user. The body covering may also include of a pair of gloves (18—Figure 2) for removably positioning over the hands of the body of the user. The body covering may also include a hat (20—Figure 2) for removably positioning over a head of the body of the user. The body covering may further include a face mask (22—Figure 2) for removably positioning over the face of the body of the user. The body covering may comprise a cloth material.

The assembly further consists of a plurality of flexible panels (24—Figures 4 through 6), with each of the panels having a length generally between 2 inches and 5 inches and a height generally between 2 inches and 5 inches. Each of the panels (24) may have an irregular shape, and may have a shape resembling a leaf (Figures 4 and 5). Each of the panels has a first side and a second side, with each of the first sides being colored. In some embodiments, each of the first sides are colored a color

selected from the group including shades of yellow, green, red, brown and orange.

The assembly (10) also consists of a plurality of couplers (30, 32—Figures 5 and 6) for removably attaching the panels (24) to the outer surface (14). As illustrated in Figures 5 and 6, each of the couplers may include a first mating member (30) attached to the outer surface (14) and a second mating member (32) attached to the second side of the panels (24). The first mating members may be spaced from each other (Figures 1 and 2) and may be generally evenly dispersed on the outer surface. The first and second mating members may include a hook and loop fastening means. Thus, each of the panels (24) may be selectively positioned on the outer surface (14) of the body covering (12).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL - 37 CFR §1.192(c)(1)(vi)

A. Claims 1 and 5 through 13 of the application stand rejected as being anticipated under 35 U.S.C. Section 102(b) by U.S. Patent No. 4,792,471 to Lee (hereinafter referred to as “Lee”).

B. Claims 2 through 4 and 14 of the application stand rejected as being unpatentable over 35 U.S.C. Section 103(a) by U.S. Patent No. 4,792,471 to Lee In view of U.S. Patent No. 6,134,718 to Sesselman (hereinafter “Sesselman”).

VII. ARGUMENT - 37 CFR §1.192(c)(1)(vii)

A. 35 U.S.C. §102(b) Rejection of claims 1 and 5 - 13 over Lee

Claim 1 requires, in part, “a body covering for removably positioning on a body, said body covering having an outer surface”, “a plurality of flexible panels”, “a plurality of couplers *for removably attaching said panels to said outer surface*”, and “wherein each of said panels may be selectively positioned on said outer surface” (emphasis added). The claims of the patent application thus require removable attachment of the panels to the outer surface of the body covering.

In the §102(b) rejection of claims 1 and 5 through 13 in the final Office Action, it is alleged by the U.S.P.T.O. that (emphasis added):

The leaves (30) themselves include hooks (50) on patch (48) which can be attached to loops on the garments when the substituting the snaps 26,28 on the garment as stated above and in the referred col. 3, lines 30-36). The leaves that contain snaps 44 can also be mated to the snaps on the garment (26,28) as seen on the pants in figure 1. Nothing precludes the wearer from directly attaching the leaves to the garment since both the leaves and the pants include the mating snap components. The snap fasteners are randomly placed over the shirt and pant garments and may be substituted with the hook and loop fastener components as indicated and discussed above. (See Lee figures 1 and 2). Lee discloses the panels (30) as being leaves, which are irregularly shaped and colored as claimed, and which are patterned after common leaves such as oak or ferns etc. (See Lee, col. 2, lines 40-50).

However, simply because the disclosure of a patent does not “preclude” or rule out a modification of the teaching suggested by the U.S.P.T.O. to meet the claimed invention, that does mean that the patent anticipates the claimed structure (particularly if the patent does not actually teach the modified structure) and also does not render the modification obvious in view of that patent. Thus, it is submitted that simply because the U.S.P.T.O. interprets the Lee patent in a manner such that “[n]othing

precludes the wearer from directly attaching the leaves [of Lee] to the garment [of Lee]”, this interpretation does not anticipate the claimed invention, or make such a modified structure obvious.

More specifically, it is pointed out that the Lee patent does not disclose that the camouflage items are directly connectable to the shirt or slacks of the Lee apparatus, and that the Lee patent only discusses the connection of the strip 10 to the shirt or slacks, and not any direct connectability of the camouflage items to the shirt or slacks. See, for example, the Lee patent at col. 3, lines 24 through 36 (emphasis added):

As a result, the body wrap camouflage strip 10 or a series of such strips will equip a person with a fast, easy and efficient type of camouflage. The product is especially useful to outdoorsmen such as bird watchers, hunters or other persons who need to be in an outdoor environment without being detected. The body wrap camouflage strip 10 may have military application. Additionally, the articles of clothing such as a shirt 56 or slacks 58 of hunter 12 may carry mateable snaps 26, 28 as shown in FIG. 1 (or VELCRO patches) at different locations to permit the strip material 24 to be attached and snap fitted thereto or to cling thereto as with the VELCRO fasteners.

Thus, while the Lee patent mentions the attachment of the strip to the shirt or slacks, it fails to mention the possibility of any direct attachability of the camouflage items to the article of clothing that is suggested in the Office Action, and this is clearly not taught by Lee to one of ordinary skill in the art.

Further, the Lee patent sets forth a more preferable manner of keeping the strip and the camouflage items on the body of the user. . See, for example, the Lee patent at col. 1, lines 55 through 61 (emphasis added):

A plurality of artificial foliage elements are fastened to the strip at longitudinally spaced positions, whereby, the strip may be wrapped about the body of the hunter, snapped together at crossover areas to

loosely lock the strip to the body such that the fauna elements carried thereby effectively breaks up the body outline.

Therefore, it is submitted that one of ordinary skill in the art could not get the idea to attach the camouflage items directly to the article of clothing from the disclosure of the Lee patent.

Additionally, it is noted that the modification of the teaching of the Lee patent that is suggested in the Office Action would have the effect of rendering the strip 10 (and its function) of the Lee patent completely superfluous. The Lee patent discloses, for example, at col. 1, lines 34 through 45 (emphasis added):

It is therefore an object of the present invention to provide a body wrap strip having physically affixed to the strip over the length of the same, artificial leaves, flowers, weeds, etc. which strip, when wrapped about the body, creates a three-dimensional camouflage effect, which readily blends to the muted greens and browns of the clothing worn by the hunter, which may readily and quickly wrapped about the body of the hunter, which does not inhibit movement by the hunter, and which materially increases the difficulty of the game being hunted for discerning the hunter wearing such camouflage strips.

If the artificial foliage elements are not attached to the strip 10, but instead are attached directly to the articles of clothing as suggested in the Office Action, there would be no need for the strip, and the strip would be rendered superfluous to the apparatus of Lee.

Moreover, the modification of the Lee patent suggested in the Office Action would clearly negate the benefit of the strip. The Lee patent discloses that it is an object of the invention to provide a strip that produces a pronounced three-dimensional effect for the camouflaging of the user. See, for example, the Lee patent at col. 1, lines 34 through 45 (emphasis added):

It is therefore an object of the present invention to provide a body wrap strip having physically affixed to the strip over the

length of the same, artificial leaves, flowers, weeds, etc. which strip, when wrapped about the body, creates a three-dimensional camouflage effect, which readily blends to the muted greens and browns of the clothing worn by the hunter, which may readily and quickly wrapped about the body of the hunter, which does not inhibit movement by the hunter, and which materially increases the difficulty of the game being hunted for discerning the hunter wearing such camouflage strips.

And also at col. 3, lines 6 through 10:

However, in all cases, the effect by attaching one or more of the body wrap camouflage strips 10 to the body of the hunter [sic] 12 is to create a three-dimensional effect and to break up the outline of the hunter.

One of ordinary skill in the art would recognize that Lee is attempting to recreate the appearance of a vine or branch through the use of the strip 10 having the camouflage items attached to it (as in a natural vine or branch). It is therefore submitted that one of ordinary skill in the art, considering the teaching of the Lee patent, would not abandon the advantages of the strip taught by Lee to eliminate the strip and attach the camouflage items directly to the articles of clothing, as suggested in the rejection of the final Office Action.

Furthermore, nothing in the Lee patent teaches or suggests that the “mateable snaps 26, 28” on the strip 10 and the shirt 56 and slacks 58 can actually be mated with the “snaps 44, 46” of the strip 10 and the items (24 through 36) that are attachable to the strip. One of ordinary skill in the art understands that snaps and VELCRO connectors utilize two opposite and complementary portions that must be positioned on the two objects to be connected, and two objects that have similar snap portions of similar VELCRO portions cannot be connected together (even though each has a “snap” or a “VELCRO strip”). While the strip 10 and the camouflage items (24, etc.) have opposite portions of the snap or VELCRO connectors, and the strip 10 and the shirt 56 and slacks 58 have

opposite portions of the snap or VELCRO connectors, nothing in the Lee patent discloses that opposite and complementary portions of any of the snap or VELCRO connectors. Thus, there is no teaching in the disclosure of the Lee patent that would indicate that the camouflage items could be directly attached to the articles of clothing.

In light of the above, it is submitted that the Lee patent does not anticipate the requirements of claim 1 and 5 through 13, and an indication of the allowability of these claims is courteously solicited.

B. 35 U.S.C. §103(a) Rejection of claims 2 – 4 and 15 over Lee and Sesselman

Claim 2 requires that “said body covering includes a pair of gloves for removably positioning over hands”, claim 3 requires that “said body covering including a hat for removably positioning over a head”, and claim 4 requires that “said body covering including a face mask for removably positioning over a face”.

As noted above, the Lee patent does not teach or suggest the attachment of the camouflage items to the articles of clothing, but instead to a strip that may be positioned over an article of clothing, but may be positioned simply over the skin of the user.

The Sesselman describes articles of clothing that may be worn on the body for blocking odors from emanating into the atmosphere, but there appears to be lacking any suggestion in the Sesselman patent or in the Lee patent that the gloves or hood of the Sesselman would be an advantageous modification of the apparatus in the Lee patent. In particular, the Lee patent describes a strip which may be wrapped about the body of the user and connected to it or optionally the strip is connected to a shirt or slacks. As noted above, the Lee patent does not

disclose anything to one of ordinary skill in the art about attachment of the camouflage items to the shirt or slacks, only to the strip, so adding additional articles of clothing to the Lee patent does not provide any further mounting locations for the camouflage items, since they are attached to the strip. Again, simply because the Lee patent does not teach against the connection of the camouflage items to the shirt or slacks does not provide the motivation to do so, nor render such a modification obvious.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Lee and Sesselman set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 2 through 4 and 15, and therefore these claims are also submitted to be in condition for allowance.

C. Conclusion

For the reasons set forth above, withdrawal of the §102(b) rejection of claims 1 and 5 through 13 is therefore respectfully requested, and an indication of the allowability of claims 1 and 5 through 13 is also requested.

Also, withdrawal of the §103(a) rejection of claims 2 through 4 and 14 is therefore respectfully requested and allowability of claims 2 through 4 and 15 is also requested.

For the foregoing reasons, appellant believes that the Examiner's rejections of claims 1 through 14 are erroneous, and reversal of the rejections is respectfully requested.

Respectfully submitted,



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VIII. CLAIMS APPENDIX - 37 CFR §1.192(c)(1)(viii)

The text of the claims involved in the appeal is as follows:

1. (previously presented) A body camouflaging assembly consisting of:
 - a body covering for removably positioning on a body, said body covering having an outer surface, said body covering including a pant and shirt combination for removably positioning over the legs;
 - a plurality of flexible panels, each of said panels having a length generally between 2 inches and 5 inches and a height generally between 2 inches and 5 inches, each of said panels having a first side and a second side, each of said first sides being colored;
 - a plurality of couplers for removably attaching said panels to said outer surface; and
 - wherein each of said panels may be selectively positioned on said outer surface.
2. (original) The assembly according to claim 1, wherein said body covering includes a pair of gloves for removably positioning over hands.
3. (original) The assembly according to claim 2, wherein said body covering including a hat for removably positioning over a head.
4. (original) The assembly according to claim 2, wherein said body covering including a face mask for removably positioning over a face.

5. (original) The assembly according to claim 1, wherein said body covering is comprised of a cloth material.

6. (original) The assembly according to claim 1, wherein each of said panels has an irregular shape.

7. (original) The assembly according to claim 6, wherein each of said panels has a shape resembling a leaf.

8. (original) The assembly according to claim 7, wherein each of said first sides is colored a color selected from the group including shades of yellow, green, red, brown and orange.

9. (original) The assembly according to claim 1, wherein each of said first sides is colored a color selected from the group including shades of yellow, green, red, brown and orange.

10. (original) The assembly according to claim 1, wherein each of said couplers includes a first mating member attached to outer surface and a second mating member attached to said second side of said panels, said first mating members being spaced from each other and being generally evenly dispersed on said outer surface.

11. (original) The assembly according to claim 10, wherein said first and second mating members including a hook and loop fastening means.

12. (original) The assembly according to claim 7, wherein each of said couplers includes a first mating member attached to outer surface and a second mating member attached to said second side of said panels, said first mating members being spaced from each other and being generally evenly dispersed on said outer surface.

13. (original) The assembly according to claim 12, wherein said first and second mating members including a hook and loop fastening means.

14. (previously presented) A body camouflaging assembly consisting of:

- a body covering for removably positioning on a body, said body covering having an outer surface, said body covering including a pant and shirt combination for removably positioning over the legs, body and arms, a pair of gloves for removably positioning over hands, a hat for removably positioning over a head and a face mask for removably positioning over a face, said body covering comprising a cloth material;
 - a plurality of flexible panels, each of said panels having a length generally between 2 inches and 5 inches and a height generally between 2 inches and 5 inches, each of said panels having an irregular shape, each of said panels having a shape resembling a leaf, each of said panels having a first side and a second side, each of said first sides being colored, each of said first sides being colored a color selected from the group including shades of yellow, green, red, brown and orange;
 - a plurality of couplers for removably attaching said panels to said outer surface, each of said couplers including a first mating member attached to outer surface and a second mating member attached to said second side of said panels, said first mating members being spaced from each other and being generally evenly dispersed on said outer surface, said first and second mating members including a hook and loop fastening means; and
- wherein each of said panels may be selectively positioned on said outer surface.

IX. EVIDENCE APPENDIX - 37 CFR §1.192(c)(1)(ix)

No such evidence under 37 CFR 1.130, 37 CFR 1.131, 37 CFR 1.132 or other evidence was submitted or relied upon during the prosecution of this application.

X. RELATED PROCEEDINGS APPENDIX - 37 CFR §1.192(c)(1)(x)

None.